California Acquisition Manual

PROCEDURE

ASSESSING INSURANCE COVERAGE ON STATE CONTRACTS

CAM 3.3.8 **DATE: 1/30/03**

A. **PURPOSE:**

This procedure will define when buyers must obtain evidence of supplier insurance coverage prior to contract award or during contract performance. Techniques for constructing contracts to reduce risk of non-performance or to manage risk are also described.

B. **DEFINITIONS:** See Glossary Section for definitions. Any definitions included here are for purposes of this procedure only.

C. **PROCEDURE:**

1. The State should not bear the risk of financial loss or damage for work done by contractors working on State owned or State operated premises (herein State premises) when that work affects State employees and persons working on State premises, or damage to State real or personal property. The State typically does not purchase insurance unless there is a statutory or contractual requirement or bond indenture. Therefore, suppliers who contract with the state and perform work on State premises must furnish evidence of adequate insurance coverage to buyers prior to award of any contract where the supplier's work on State premises consists of more than just delivering goods to a State facility.

2. The buyer shall review the scope of work to be performed to determine the amount(s) of insurance coverage that will adequately protect the State's interests. The buyer should consult with the Department of General Services Office of Risk and Insurance Management (ORIM) if they have any questions or to assess whether any uncommon risks are present given the nature of the work to be performed.

    a. Some common high contract risk areas are the purchase of goods which could cause substantial bodily injury and property damage if they malfunction or spoil where the malfunction or spoilage is likely to occur within six months to one year after they are purchased. Examples are: ammunition and explosives; meat, fish, poultry or fresh produce; and drugs, biological products and reagents. Make sure the general liability requirement includes product liability coverage.

    b. Professional liability insurance should be required for anyone who gives advice or provides services on which others have reason to rely and may be subject to legal action if the advice/service proves faulty. This could apply to major acquisitions of information technology.

    c. Labor Code Section 3700 et seq. requires all employers of more than one person to maintain worker's compensation insurance (i.e., this does not apply if the contractor firm is a sole proprietor). Solicitations and contracts for information technology services may require that any firm considered for award or actually awarded a contract show evidence of such insurance. The contract may require that the insurance certificate evidencing such coverage be renewed to cover each year of contract performance.

3. Buyers may review insurance certificates on the Internet through ORIM's website at www.orim.dgs.ca.gov to establish compliance with the requirements of this procedure. If ORIM does not have a certificate on file for a supplier or if the insurance coverage evidenced by the certificate is not deemed adequate for the specific transaction, the buyer shall obtain a certificate from the supplier and forward it to ORIM for their review and evaluation.

4. The Buyer shall use the Certificate Tracking system through ORIM's website to review the certificate for the following:

   a. Whether the insurance carrier, which provides coverage to the supplier, is in good standing with the State;

   b. whether the insurance coverage is adequate to protect the State's interests given the risks of the particular procurement transaction;

   c. whether the certificate shows the State as an "additional insured" on the policy; and

   d. whether the certificate provides for notification to the State 30 days prior to the insurance carrier canceling insurance coverage of the supplier.

5. In the event that ORIM recommends to the buyer that the certificate of insurance is not adequate or the insurance provider is not in good standing with the State or the coverage amounts are not sufficient to protect the State's interests, the buyer shall:

   a. Contact the supplier and indicate the problems identified by ORIM and give them an opportunity to correct them, if to do so would not taint any pending formal competitive bid process. See CAM 3.5.3, Evaluating Solicitation Responses.

   b. Where correction of the problem is deemed inappropriate, the buyer may determine the supplier is ineligible for award on the basis that it is not a "responsible" supplier in accordance with CAM 3.5.4, Assessing Supplier Responsiveness and Responsibility, and include a written determination of that circumstance in the contract file. The supplier might also be "non-responsive" assuming the requirement for insurance was specified in the solicitation.

   c. If the buyer decides to award the contract despite potential risk of inadequate insurance or other contract risk, the buyer should attempt to modify the contract to eliminate or reduce the risk of non-performance. Written management concurrence is required for this decision and this written approval must be evidenced in the contract file.

6. To properly manage contract risk, buyers must first consider all the risks inherent in the work to be performed. Risks in this context are not just to State personnel or property, but risks of contract non-performance, as well. Some techniques to manage risk are:

   a. Create a risk management plan as part of the acquisition plan and develop contingency plans. See CAM 3.3.3, Acquisition Planning.

   b. Select the type of contract to better allocate the risks between the State and the supplier. For example, firm fixed-price contracts limit the State's risk but are only appropriate for well-defined contract requirements. While cost-reimbursable contracts place more risk on the State, they may be appropriate where the requirements are less well defined. Finally, labor-hour or time and materials contracts place maximum risk on the State, but may be appropriate for some contract's requirements. See CAM 3.3.6, Selection of Contract Type, for more information.

c. Provide in the contract for detailed schedules of performance (with work breakdown structures, if necessary) and use Project Management principles to closely monitor the supplier's activities. Include specific reporting requirements, data or report submissions and establish periodic reviews of the performance (at either the supplier's facility, the State's facility or both) to determine that work is proceeding according to plan. The Procurement Division Technology Acquisitions or Procurement Engineering Staff can provide project management assistance.

d. Heightened post-award contract administration is usually necessary in high risk contracts to ensure that small problems or miscommunications do not result in complete failure of performance. The buyer must protect the State's interests and ensure that performance occurs. This includes processing changes, and negotiating consideration for changes (or requests for contract adjustments) where appropriate. See CAM 3.7.2, Contract Changes. In the event that performance is threatened, or there is a breach of contract, see CAM 3.7.5, Receiving Inspection and Acceptance Testing or Rejection of Non-Conforming Goods; CAM 3.7.6, Dispute Resolution; and CAM 3.7.7, Contract Termination for additional guidance.

7. In contracts where the period of performance exceeds one year, the buyer shall determine that suppliers have adequate insurance for each annual period of the contract. This may be done by verifying insurance coverage in ORIM's database or obtaining additional insurance certificates that are determined to be adequate. This verification also shall be done any time the buyer exercises an option set forth in the contract. See CAM 3.3.7, Options.

   a. If the renewal insurance certificate is determined not to be adequate, the supplier may be given an opportunity to provide a corrected certificate within a stipulated period of time not to exceed 30 days.

   b. Alternatively, the buyer may consider terminating the contract if the risk to the State is deemed unacceptably high such that the supplier is no longer "responsible". See CAM 3.5.4, Assessing Supplier Responsiveness and Responsibility and CAM 3.7.7, Contract Termination.

D. **RESPONSIBILITIES:**

1. Buyers shall analyze and plan for contract risk and take appropriate steps to eliminate, reduce or transfer risk, with management support.

2. Buyers shall obtain certificates of insurance (or verify adequate insurance coverage is available using ORIM's database) whenever the supplier will be performing work on State premises. Certificates of insurance shall be analyzed to determine whether they are adequate or whether there are problems that can be corrected by the supplier prior to contract award. For multi-year contracts, the buyer will obtain renewal insurance certificates annually and evaluate them for adequacy and seek ORIM's assistance.

3. ORIM shall support buyers by reviewing certificates of insurance for adequacy and maintaining a database of acceptable certificates. ORIM will make recommendations to buyers when certificates are determined to be inadequate.

E. **APPENDICES:** None

F. **AUTHORITY AND REFERENCES:**

1. Statutory: None

2. Administrative: State Contract Manual, Section 7.4, Insurance

3. Procedural: CAM 3.3.3, Acquisition Planning
CAM 3.3.6, Selection of Contract Type
CAM 3.3.7, Contract Options
CAM 3.5.3, Evaluating Solicitation Responses
CAM 3.5.4, Assessing Supplier Responsiveness and Responsibility
CAM 3.7.2, Contract Changes
CAM 3.7.5, Receiving Inspection and Acceptance Testing or Rejection of Non-Conforming Goods
CAM 3.7.6, Dispute Resolution
CAM 3.7.7, Contract Termination

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